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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass. 3/F

Washington, D.C. 20536

FILE: [REDACTED] Office: BANGKOK, THAILAND

Date:

MAY 28 2003

IN RE: Applicant: [REDACTED]
APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(h), 212(i) and 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h), 1182(i) and 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

MAY 28 03-01H2212

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Thailand. The applicant was found to be inadmissible to the United States pursuant to sections 212(a)(2)(D)(i), 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(D)(i), 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(I), for having engaged in prostitution, for misrepresentation, and for having been unlawfully present in the United States.

The record reflects that the applicant procured admission into the United States (U.S.) on February 25, 1998 using a fraudulent passport and visa. The record further reflects that upon arrival in the United States the applicant began working as a prostitute. The record indicates that the applicant remained unlawfully in the U.S. until August 10, 1999.¹ The applicant married a U.S. citizen in Miami, Florida, on January 17, 1999, and she is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside with her husband in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. See *District Director Decision*, dated March 6, 2002.

Counsel in this case filed two motions to extend the deadline to file an appeal brief. The motions were filed so that counsel could obtain Freedom Of Information Act (FOIA) results from the applicant's file. The first motion, filed April 19, 2002, requested an additional 150 days beyond the April 29, 2002, filing deadline - through September 29, 2002. The second motion, dated September 12, 2002, requested an additional 150 days to file an appeal brief - through March 1, 2003. Both motions were granted by the AAO. However, as of the date of this decision, no further information or evidence has been submitted by counsel.

Counsel asserts on the Notice to Appeal (Form I-290B) that, "the Service did not assess all the extreme hardship factors in their

¹ It is noted that the evidence in the file indicates the applicant may have been the victim of sex trafficking. The Victims of Trafficking and Violence Protection Act (VTVPA) was enacted in October 2000, to combat international trafficking in persons into the sex trade, slavery, and involuntary servitude. See VTVPA, PL 106-386, 2000 HR 3244; 114 Stat. 1464. The VTVPA amended certain sections of the Immigration and Nationality Act (amended Act) in order to facilitate the prosecution of trafficking perpetrators, while at the same time protecting the victims. Based on the evidence in this case, however, the applicant does not qualify for relief under the provisions set forth in the amended Act. See §§ 101(a)(15)(T), 212(d)(13), and 245(l) of the Act; 8 U.S.C. §§ 1101(a)(15)(T), 1182(d)(13) and 1255(l).

aggregate and cumulatively" and that other errors of law and fact would be cited in a brief. See Notice of Appeal, filed April 9, 2002. No other assertions were made and no additional brief was filed. The findings in the present case are therefore based on the evidence in the record as it exists on the date of this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States. . . and again seeks admission within 3 years of the date of such alien's departure or removal . . . or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

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(v) Waiver. - The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien

The district director erroneously found that the applicant was inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act. As indicated above, an alien is inadmissible under section 212(a)(9)(B)(i)(I) if she or he has been unlawfully present in the U.S. for more than 180 days but less than 1 year. The evidence in the record in this case indicates that the applicant was unlawfully present in the U.S. for more than 1 year (from February 25, 1998 until August 10, 1999) and that she is instead inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. Nevertheless, the AAO finds this error to be harmless, as the applicant remains inadmissible pursuant to section 212(a)(9)(B)(i) and both sections provide equally for a waiver of inadmissibility based on extreme hardship to a qualifying relative.

Section 212(a)(6)(C)(i) of the Act states, in pertinent part that:

(6) Illegal entrants and immigration violators.

(C) Misrepresentation.-

(i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (I).

Section 212(i) states in pertinent part that:

(i)(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien

Section 212(a)(2)(D)(i) states in pertinent part that:

(D) Prostitution and commercialized vice.-Any alien who-

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status [is inadmissible].

. . . .

(F) Waiver authorized.- For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

Section 212(h) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive

the application of [subparagraph] . . . (D) of subsection (a)(2) . . . if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(1) the alien is inadmissible only under subparagraph (D)(i). . . of such subsection . . . or

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(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

It is noted that the applicant is not eligible for an exercise of discretion pursuant to section 212(h)(1)(A)(i) because she is inadmissible under two other grounds of inadmissibility. The applicant is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(B).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed to be relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The record in this case contains a letter written by the applicant asserting that her husband will suffer extreme hardship if she is not allowed to return to the United States. The applicant states that she and her husband miss each other very much and that he will suffer emotional hardship if she is not granted a waiver of inadmissibility. The applicant asserts further that her husband is unable to obtain gainful employment in Thailand and that he must therefore live in the United States. She states that her husband cannot afford to visit her often and that he suffers additional financial hardship because he helps

her with her living expenses as well. The applicant does not discuss family or community ties in or outside of the U.S. and no health issues are asserted.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family ties is a common result of deportation and did not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The court then reemphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.